

**IN THE
COMMONWEALTH OF VIRGINIA
REAL ESTATE BOARD**

Re: Larry A. Wittig
Bridgewater, VA 22812

File Number 2011-03101
License Number 0225112867

CONSENT ORDER

Respondent Larry A. Wittig ("Wittig") recognizes and acknowledges being subject to and bound by the Regulations of the Real Estate Board ("Board"), as well as by all other applicable Virginia laws.

Wittig knowingly and voluntarily waives any proceedings for this matter under the Administrative Process Act, §§ 2.2-4019, 2.2-4020, and 2.2-4021 of the 1950 Code of Virginia, as amended.

Board's Regulations provides:

18 VAC 135-20-155. Grounds for disciplinary action.

The board has the power to fine any licensee, and to suspend or revoke any license issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter where the licensee has been found to have violated or cooperated with others in violating any provision of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1 of the Code of Virginia or any regulation of the board. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia may be charged with improper dealings, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

Historical Notes:

Derived from Virginia Register Volume 19, Issue 12, eff. April 1, 2003.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

By signing this Consent Order, Wittig acknowledges an understanding of the charges. Wittig neither admits to nor denies to the violation(s) of the Counts as outlined in the Report of Findings, but consents to the following term(s):

Count 1:	18 VAC 135-20-185.B	\$1,000.00
SUB-TOTAL (MONETARY PENALTIES)		\$1,000.00
BOARD COSTS		\$ 150.00
TOTAL		\$1,150.00

In addition, for violation of Count 1, Wittig agrees to probation of his license until Wittig completes two (2) classroom hours of Board-approved continuing education pertaining to Broker Management and Supervision. Such course(s) shall be completed in a classroom. Further, Wittig shall provide evidence acceptable to the Board that Wittig has successfully completed the course(s) within three (3) months of the effective date of this order.

Also, for violation of Count 1, Wittig agrees to probation of his license until Wittig completes three (3) classroom hours of Board-approved continuing education pertaining to Ethics. Such course(s) shall be completed in a classroom. Further, Wittig shall provide evidence acceptable to the Board that Wittig has successfully completed the course(s) within three (3) months of the effective date of this order.

Wittig understands that the above-referenced continuing education hours will not count towards any continuing education requirements, if applicable, for renewal, reinstatement, or activation of a license.

The Board considered that due to the seriousness of the violation, the number of property owners affected by the actions of the regulant, and in accordance with previous Board action, the Board voted to increase the monetary penalty and impose additional continuing education.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Wittig acknowledges any monetary penalty and/or costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Wittig will be responsible for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

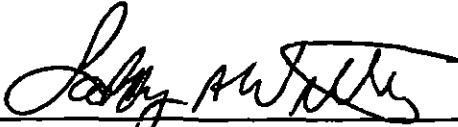
Wittig acknowledges that failure to pay any monetary penalty or costs and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Wittig's license until such time as

there is compliance with all terms of this Order. Larry A. Wittig understands the right to have this automatic suspension considered in an informal conference pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

The undersigned represents and affirms that he/she has the authority to legally bind Larry A. Wittig, to this Consent Order. The individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that Larry A. Wittig, shall be bound by its terms and conditions.

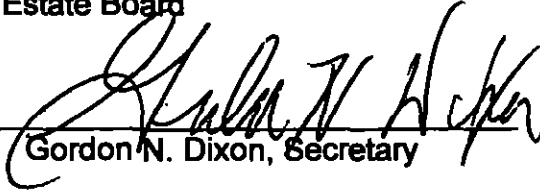
 3/30/2011
Signature Date

LARRY WITTIG
Printed Name

SO ORDERED:

Entered this 4th day of April, 2011.

Real Estate Board

BY: 
Gordon N. Dixon, Secretary

EOO

**VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
9960 MAYLAND DRIVE, SUITE 400
RICHMOND, VA 23233-1463**

REPORT OF FINDINGS

BOARD: Real Estate Board
DATE: November 19, 2010

FILE NUMBER: 2011-03101
RESPONDENT: Larry A. Wittig
LICENSE NUMBER: 0225112867
EXPIRATION: August 31, 2011

SUBMITTED BY: Jennifer Winters
APPROVED BY: Doug Schroder

COMMENTS:

None

Larry A. Wittig ("Wittig") was at all times material to this matter a licensed real estate broker in Virginia (No. 0225112867).

As a result of information learned during the Informal Fact-Finding Conference ("IFF") held on November 17, 2010, for File Number 2010-01554 regarding Karen Taylor ("Taylor"), the Board learned Wittig may be in violation of Board's regulations.

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

From August 28, 2007, to January 23, 2009, Taylor was employed with Cottonwood Commercial LLC ("Cottonwood"). (Exh. 1-3) In October 2008, Taylor was informed Cottonwood decided to cease property management services at the beginning of 2009. Taylor approached Wittig about hiring her and expanding his real estate services to include property management services. Wittig agreed to hire Taylor to manage the

property management section and maintain the books for his real estate office¹. Wittig had no prior property management experience. (Exh. I-4 pg. 1 and I-5 pgs. 1-2)

On January 8, 2009, Heritage Real Estate Group, LLC ("Heritage") was issued a firm license. Wittig is the principal broker of Heritage. (Exh. I-1 and I-2)

According to the Board's licensing records, from February 2, 2009, to October 13, 2009, Taylor was employed with Heritage. (Exh. I-3)

1. Board Regulation

18 VAC 135-20-185. Maintenance and management of financial records.

- B. The principal broker shall maintain a bookkeeping or record keeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.

Historical Notes

Derived from Virginia Register Volume 19, Issue 12, eff. April 1, 2003.

Print Date: September 1, 2004

FACTS:

In January 2009, Taylor transferred the 31 or 32 properties she had managed under Cottonwood to Heritage to continue her property management services for the properties. Wittig and Taylor had a verbal agreement. Heritage was to get \$500.00 a month on Taylor's current clientele and Taylor was to pay all her expenses. Any new clients would be split 50/50 with Heritage being responsible for postage, etc. (Exh. I-4 pg. 1, I-5 pg. 1 and I-6 pg. 1)

During the IFF, Wittig explained that Taylor created an individual notebook for each property. Each notebook contained what purported to be monthly owner statements and supporting documentation (e.g. invoices, rent receipts, monthly reconciliations, and owner statements). (Exh. W-5, pg. 13 and W-2)

After the first few months of Taylor's employment, Wittig would only scan the notebooks to see if everything was up to date. He did not open every notebook, but would look at a sampling of the properties every few weeks. Wittig did not reconcile the bank statements and did not look at all of the leases. (Exh. I-4 pgs. 2-3)

¹ In December 2008, Heritage opened three accounts at BB&T: Tenant Escrow account number ending in 7230, Owner Escrow account number ending in 7222, and Heritage Operating account number ending in 7206. Taylor, along with Wittig, had signature authority on the three BB&T accounts. (Exh. C-3) Further, Wittig rented office space in an office building to house the new firm. (Exh. W-5 pgs. 7-8)

Wittig admitted Taylor did not get a lot of oversight because she came to him claiming that she had several years of experience at Cottonwood. Further, Wittig admitted he did not watch Taylor as closely as he should have. (Exh. I-6 pg. 2)

During the IFF, Wittig stated that Taylor was usually thirty (30) days behind in filing and there were times when Wittig would see a stack of about 30-40 pages of documents on Taylor's desk that needed to be filed in the property notebooks. (Exh. W-5, pgs. 13 and 15-16)

Wittig also stated Taylor would leave documents on her desk, such as the bank statements, which appeared to show Taylor had reviewed/processed them. For example, the bank statements had checkmarks as if they had been reconciled. While Wittig would review the bank statements, he never reconciled them himself. Wittig relied on Taylor to do all of the bookkeeping. He stated accounting was not his strong forte and he was depending on Taylor to be able to account for the firm's records. (Exh. W-5, pgs. 11-12, and 21)

During the end of August/September 2009, owners began calling Wittig with questions. (Exh. W-5, pg. 7) Around the end of September 2009, Wittig became aware that Taylor was not doing things correctly. At that point, Wittig asked Taylor why the escrow account was not 100%. Taylor admitted she used security deposits for rents. Also, Taylor had paid owners' rental proceeds even when rents had not been received from the tenants. When Wittig asked Taylor to produce an accounting for the property management accounts, Taylor gave the excuse that the accounting was at her house and she needed to bring them up to speed. Wittig directed Taylor to produce the information, but Taylor failed to do so. (Exh. I-4 pg. 1 and I-6 pgs. 1-2)

During the IFF, Wittig stated it was Taylor's responsibility to reconcile the bank accounts. He added, "My intentions was for Ms. Taylor to take care of all the bookkeeping for the firm." Taylor would leave bank account statements on the desk and Wittig stated they appeared to be "checked off". Wittig's suspicions that Taylor was not properly performing her job were confirmed when owners began calling Wittig to complain. Wittig stated, "At that point I realized that she [Taylor] was only doing some things in the office for the benefit of me so she could actually fool me into thinking she was doing her job properly." Wittig conceded that if he had reconciled the bank accounts, he would have realized this sooner. (Exh. W-5, pgs. 11-12)

In September 2009, Wittig had Lee Ann Wittig ("LA Wittig"), a Certified Management Accountant with more than 15 years accounting experience, review the books kept by Taylor. LA Wittig discovered Taylor could not provide detailed balances for any of the bank accounts. LA Wittig also discovered the information Taylor put in the property notebooks was often inconsistent, incomplete, and could not be reconciled with the data Taylor had entered into the Quicken computer program. (Exh. I-4 pgs. 1-2 and W-2)

On October 9, 2009, Wittig terminated Taylor's employment with Heritage. (Exh. C-1 and I-3)

LA Wittig reconstructed Heritage's property management accounts to determine the transaction history for each property. Over the next few months, LA Wittig spent nearly 140 hours reconstructing, reconciling, and correcting Taylor's data. LA Wittig had to manually compare bank statements, vendor invoices, check stubs, and deposit slips. (Exh. W-2)

After reconstructing Heritage's accounts, LA Wittig discovered Taylor had commingled tenant escrow funds, owner escrow funds, and Heritage operating funds. LA Wittig also found math errors, bank deposits that did not equal the amount of the checks/cash actually received, unpaid vendor invoices, and rental proceeds paid to owners for months when the tenant had not paid rent. (Exh. W-2)

LA Wittig's findings provided to the Board include:

- \$9,900.00 of owner escrow funds not transferred from Cottonwood to Heritage in January 2009;
- \$15,290.60 of tenant security deposit escrow funds not transferred from Cottonwood to Heritage in January 2009;
- \$20,990.00 of rental proceeds paid to owners when Heritage never received rental money from the tenants;
- \$8,393.83 security deposit discrepancy between the amount in escrow versus amount required by the leases; and
- \$3,535.28 in discrepancies between expenses paid by Heritage and amounts not charged to owners. This also included multiple mathematical errors made in the computation of owner payments.

(Exh. C-2 and I-7 pg.1)

In addition to LA Wittig's efforts to reconstruct Taylor's records, Rebecca Funkhouser ("Funkhouser"), a bookkeeper from Cottonwood with nearly 16 years experience, spent approximately 80 hours attempting to reconstruct and reconcile Cottonwood's records for the time Taylor was employed by Cottonwood. When Taylor left Cottonwood, Taylor provided a spreadsheet, but it was incomplete. Taylor did not provide a final spreadsheet or accounting for the transactions conducted under the authority of Cottonwood. Funkhouser and LA Wittig met over several days to compare spreadsheets, bank records, and the data Taylor had inputted in Quickbooks. Taylor's record-keeping in Quickbooks was less than proficient, making it difficult to verify necessary information. Funkhouser and LA Wittig examined each lease and verified deposits for both tenants and owners. (Exh. I-6 pg. 6 and W-3)

A review of Heritage's books show that the information recorded by Taylor in the property management records does not match the rental proceed payments Taylor made to the owners.

Examples of discrepancies in owner statements and payments include:

- Owner statement for 87 Hope Street dated January 6, 2009, indicates the owner is due \$755.00 for January rent. (Exh. C-19) Heritage's records indicate the owner was paid \$865.00. (Exh. C-7 and C-20)
- Owner statement for 9325 North Congress dated February 6, 2009, lists rent as \$700.00 a month. Deducted from the rent are maintenance, repairs, and Heritage's management fee for February. The owner statement shows a total due of \$112.84 to the owner. But the Heritage record then lists the rent actually collected as \$610.00. (Exh. C-25 and C-26) When the collected amount of rent is used, the amount due to the owner is only \$22.84 (after maintenance, repairs, and the management fees are subtracted.) The owner statement for March begins with the incorrect amount of \$202.84 listed as being due to the owner; therefore the figures for March are incorrect. (Exh. C-27)
- On May 15, 2009, Heritage's records show that receipt number 356124 in the amount of \$855.00 for rent monies was issued for "Jacob, Micah, Joe" referring to the tenants at 1212 Old Richmond Circle. (Exh. C-9 and C-10) Heritage's records for 1212 Old Richmond Circle indicate that only \$240.00 of the \$855.00 rent monies received was deposited on May 18, 2009. (Exh. C-11)
- On or about May 19, 2009, a Money Order Receipt 09097319938 from Wallace indicates Wallace paid \$380.00 in rent monies to Heritage. (Exh. C-15) The lease and property management agreements for the property indicate the monthly rent is \$380.00. (Exh. C-28 and C-29) Heritage's records for Wallace's rental (845 Highland Avenue #3) shows no record of receiving May rent monies from Wallace. (Exh. C-6)
- Owner statement for 185 Emerson Lane dated June 6, 2009, indicates the owner is due \$279.33 for June rent. (Exh. C-21) The owner was paid \$279.33. (Exh. C-7, C-21, and C-22) When the figures on the owner statement are correctly subtracted, the owner is due only \$228.93. (Exh. C-21)
- Owner statement for 1030 Molly Pritchard Place dated September 6, 2009, indicates the owner is due \$226.50 for September rent. (Exh. C-23) Heritage's records indicate the owner was paid \$226.50 as rental proceeds. (Exh. C-7 and C-24) However, when the figures included on the September owner's statement are correctly computed, the amount due to the owner for September should be only \$150.00. (Exh. C-23) Heritage's records further indicate "missing rent" from the tenant during this period of time. (Exh. C-24)

On or about December 2, 2009, LA Wittig and Funkhouser, met to determine what monies Taylor failed to transfer from Cottonwood to Heritage in January 2009 when Taylor transferred the property management accounts. (Exh. I-6 pg. 6 and I-7 pg. 2)

On or about December 9, 2009, Cottonwood transferred to Heritage a total of \$17,425.46 (\$11,980.60 for tenant security deposit escrow and \$5,444.86 for owner escrow). (Exh. C-16, C-17, I-7 pg.2, and W-1 pg.4) Wittig contributed \$6,993.62 of his own money to Heritage's escrow accounts to make all escrow accounts whole. (Exh. I-6 pg. 6 and I-7 pg. 2)

The Board's regulations place certain financial duties and responsibilities for the transactions handled by the firm on Wittig, the principal broker.

Board Regulation 18 VAC 135-20-10 defines principal broker as:

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. ***The principal broker shall have responsibility for the activities of the firm and all its licensees. (Emphasis added.)***

Board Regulation 18 VAC 135-20-185 states in part:

A. A complete record of financial transactions conducted under authority of the principal broker's Virginia license shall be maintained in the principal broker's place of business, or in a designated branch office. (Emphasis added.)

B. The principal broker shall maintain a bookkeeping or record keeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained. (Emphasis added.)

C. Actions constituting improper record keeping include:

- 1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification, if the transaction fails to close, a complete and legible copy of each disclosure of a brokerage relationship, and each executed contract, agreement, and closing statement related to a real estate transaction, in the broker's control or possession, unless prohibited by law.***

On February 16, 2010, Wittig told Investigator Renee Popielarz, the Board's agent, "Taylor did not get a lot of oversight because she came to me saying she had several years experience with a firm I used to work for. Taylor told me she worked directly with the principal broker at Cottonwood, Keith May, so I thought she came across as knowing what she was doing. I did not watch her as close as I should have because I did not think I needed to. I did look at the books and other things left out to look at". (Exh. I-6 pg. 2)

On June 10, 2010, several of the Board's agents conducted an escrow audit of Wittig's reconstructed files. Based on the information available at that time it appeared that Wittig had the proper balances in the escrow accounts. (Exh. I-10)

From January 2009 to December 2009, Wittig failed to maintain a bookkeeping or record keeping system which accurately and clearly disclosed full compliance with the Board's regulations.